

Shawn J. Lau, Esquire  
PA I.D. No. 56071  
LAU & ASSOCIATES, P.C.  
4228 St. Lawrence Avenue  
Reading, PA 19606  
(610) 370-2000  
Fax: (610) 370-0700  
*Attorney for Debtors*

THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

<b>IN RE:</b> <b>LARRY LEE WISSER and</b> <b>CATHLEEN RACHEL WISSER,</b> <b>Debtors</b>	BANKRUPTCY NO. 20-14201  <b>CHAPTER NO. 12</b>
<b>In re Objection to Proof of Claim 11-1</b> <b>docketed at CM/ECF # 135</b>	

**DEBTORS' MOTION TO COMPEL PRODUCTION, OR, IN THE ALTERNATIVE**  
**APPLY A NEGATIVE INFERENCE**

COME NOW the Debtors, Larry Lee Wisser and Cathleen Rachel Wisser ("Debtors"), by and through their undersigned counsel, Shawn J. Lau, Esq. and Lau & Associates, P.C., and hereby move this Honorable Court to compel the production of certain documents and things which were the subject of Requests for Production made to the United States of America, acting through the Farm Service Agency – USDA ("USDA"), and in support thereof do hereby state as follows:

1. The Debtors filed a petition seeking protection under Chapter 12 of the United States Bankruptcy Code on October 20, 2020.
2. The USDA is a secured claimant in the Debtors' Chapter 12 bankruptcy case, having filed Proof of Claim 11-1 ("USDA Claim").
3. The USDA Claim arises from a series of promissory notes allegedly entered into by the Debtors with the USDA, including but not limited to a Promissory Note for \$150,000.00

allegedly entered into under Loan # 44-01 on or about November 10, 2004 (the “\$150,000.00 Loan”).

4. Debtors, on August 24, 2021, objected to the USDA Claim, and as part of the basis for such objection alleged that they did not receive, to their recollection, any disbursements related to the \$150,000.00 Loan.

5. The USDA has previously asserted that the proceeds of the \$150,000.00 Loan were disbursed directly to the Debtors.

6. On August 27, 2021 the Debtors served Requests for Production of Documents upon the USDA, a true and correct copy of which is attached hereto as “Exhibit A.”

7. On September 27, 2021, the USDA made a production consisting of 236 Bates Stamped pages labelled R0001-R0236 to the Debtors in response to the Requests for Production, a true and correct copy of which is attached hereto as “Exhibit B.”

8. As part of their requests, the Debtors specifically sought production of all records of disbursements, including cancelled checks, in relation to the \$150,000.00 Loan. [Exhibit A at ¶¶ 1-5].

9. Given that the USDA has alleged the checks for these alleged disbursements were provided directly to the Debtors, and Debtors have alleged they did not receive such checks, such cancelled checks or copies of such checks showing who they were payable to are a material question at issue in this matter.

10. Despite this, the USDA has provided only one check copy, being the copy of the Treasury Check issued in the amount of \$1.00 under Check No. 3091 09276865 on November 19, 2004. [Exhibit B at R 0013].

11. No other checks from the \$150,000.00 Loan were included in the production, despite the produced records showing two checks in the amounts of \$99,000.00 (Check 3091-09163425) and \$50,999.00 (Check 3091-09236509) related to said loan were received by the USDA offices on November 4, 2004 and November 15, 2004, respectively. [Exhibit B at R0006 and R0008].

12. The handwritten notes regarding the \$150,000.00 Loan likewise do not set forth when any such checks other than the \$1.00 check were delivered to the Debtors, what amount they were made in, or provide any further documentation of disbursements, [Exhibit B at R0001-R0005].

13. Despite the heavy documentation of Check 3091-09276865 for \$1.00, virtually no documentation regarding the receipt or delivery of Checks 3091-09163425 and 3091-09236509 was produced by the USDA.

14. Given that Checks 3091-09163425 and 3091-09236509 appear to have been delivered directly to the Berks County FSA offices, and were marked as received by them, Debtors believe copies of said checks, receipts for the delivery of them, or other such documentation exists that has not been produced despite the request for such documentation. [Exhibit B at R0006 and R0008].

15. Likewise, as the apparent issuing party is the United States Treasury, the USDA, which is indeed the United States, has the ability to obtain such checks or deposit information from their records.

16. In multiple conversations with USDA's counsel, Debtors have repeatedly requested these checks showing the front and back from the USDA to no avail.

17. As such, Debtors request this Honorable Court compel the USDA to provide copies of Checks 3091-09163425 and 3091-09236509 as issued, showing who they were made payable to and, where records of the deposit of such checks exist, when, where, and who they were cashed by.

18. Further, Debtors request this Honorable Court compel the USDA to provide receipts or other documentation tending to show these checks were actually delivered to the Debtors.

19. Likewise, Debtors request this Honorable Court compel the USDA to provide any records for supervised bank accounts that were created as a result of the \$150,000.00 Loan.

20. The USDA has produced documentation stating that, in conjunction with the \$150,000.00 Loan, a “Supervised Bank Account” was required, and the USDA was to “control loan funds” as a result thereof. [Exhibit B at R0075-R0077].

21. Despite such a condition of approval being set forth in the loan approval documents, the USDA has provided no documentation tending to show such a supervised account was ever established.

22. To the extent the USDA cannot or will not produce the requested documentation, the Debtors ask that this court apply a negative inference that the disbursement of the \$150,000.00 Loan to the Debtors never occurred.

WHEREFORE the Debtors, Larry Lee Wisser and Cathleen Rachel Wisser, respectfully request this Honorable Court compel the USDA to produce:

- a. The front and back of Check 3091-09163425 in the amount of \$99,000.00;
- b. The front and back of Check 3091-09236509 in the amount of \$50,999.00;
- c. The front and back of Check 3091-09276865 in the amount of \$1.00;

- d. Any documentation in relation to the Supervised Bank Account that was marked as required for the approval of the \$150,000.00 Loan; or, in the alternative
- e. The application of a negative inference that the failure to make such production indicates the disbursement of the \$150,000.00 Loan to the Debtors never occurred.

**LAU & ASSOCIATES, P.C.**

**Date: 9/28/2021**

**By: /s/Shawn J. Lau**  
**Shawn J. Lau, Esquire**  
**Lau & Associates, P.C.**  
**4228 St. Lawrence Avenue**  
**Reading, PA 19606**  
**610-370-2000**